

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

J U D G M E N T

JAGDISH PRASAD VS. SAMPAT RAJ & ANOTHER
S.B.CIVIL SECOND APPEAL NO.417/2005

Date of Judgment :- 17.5.2006

PRESENT.
HON'BLE MR.JUSTICE PRAKASH TATIA.

Mr. Chaitanya Gahlot for the appellant.
Mr. Sandeep Sarupariya for the respondents.

BY THE COURT :-

Heard learned counsel for the parties.

The plaintiff is aggrieved against the judgment of the Trial Court dated 11th October 2002 and appellate Judgment dated 23rd September 2005. The Trial Court decreed the suit of the plaintiff respondents against the defendant appellant on the ground of default in payment of rent, denial of title but decided the issue of personal bona fide necessity against the plaintiff.

The appellate Court after upholding the finding of the Trial Court on issue of default and denial of title held that the

plaintiff proved personal bona fide necessity for the suit property. Hence, second appeal.

According to the learned counsel for the appellant the suit property was taken on rent by the appellant in the Samwat Year 2035 on annual rent of Rs.281/- which was increased Rs.340/- and lastly on 7th November 1972 to Rs.441/- per annum. According to the appellant tenant, appellant tenant paid the rent in advance on 10th September 1974 up to the period of November 1976.

On 31st August 1975 plaintiff took a loan of Rs.7,000/- from the appellant defendant and executed an agreement that in case the said loan amount shall not be paid by the plaintiff to the defendant tenant appellant within 2 years, the appellant tenant shall become owner of the rented premises automatically. It is also provided in the agreement that the loan amount shall carry interest at the rate of 24% per annum. In case tenant shall not pay rent, rent shall be adjusted from the interest liability of the plaintiff. According to the learned counsel for the appellant, the plaintiffs did not repay the amount not only within 2 years, even thereafter. The plaintiff did not pay interest also, after taking the

loan in the year 1975 from the defendant. By calculating interest, amount according to the defendant appellant the rent stand paid to the plaintiff up to period of Samwat Year 2043. The plaintiff filed suit in the year 1986 which is corresponding to the Samwat Year 2043, therefore, the defendant was not defaulter in payment of rent at the time of filing of the suit.

Learned counsel for the appellant also submitted that in view of the agreement dated 13th August 1975 and because of the non-payment of loan amount of Rs.7000/- by the plaintiffs, the defendant become owner of the rented premises automatically. Since the defendant become owner of the property, therefore, apprehending that plaintiffs may sale the rented property to any third person, he, therefore, published a notice in the News Paper for public informing that by virtue of the agreement dated 13th August 1975 he (defendant) become owner of the property. The same was the stand taken by the defendant in his written statement upon which the issue of denial of title was also framed. According to the learned counsel for the appellant, the defendant only relied on the admission of the plaintiffs which has been made by him in the written agreement

dated 13th August 1975, and, therefore, pleaded he become owner of the property by virtue of agreement dated 13th August 1975, and therefore, it is not a case of denial of title.

I considered the submission of the learned counsel for the appellant and perused the facts of the case. The facts which has been stated by the defendant itself discloses that the defendant was in possession of the suit property as tenant and continued to be tenant even after agreement dated 13th August 1975, as in agreement dated 13th August 1975 the defendant himself admitted that he is liable to pay rent, mode of payment of rent is not relevant. In this case even if case of the defendant is accepted even then adjustment of rent out from the interest amount is also payment of rent by the tenant.

So far as claiming of title on the basis of agreement dated 13th August 1975 is concerned, there was no justification for that because of the reason that by this mode the defendant could not have and has not become owner of the property. The act of the defendant amounts to denial of title of the plaintiffs and that denial cannot be said to be bona fide because of the reason

that the stand is contrary to the statutory provision. Section 49(a) of the Registration Act, 1908 providing that no document required by Section 17 of the Registration Act or by any provision of Transfer of Property Act to be registered shall affect any immovable property comprised therein. The defendant not only denied the title of the plaintiffs but continued to deny the title of the landlord and proclaimed it by publication in News Paper that he is owner of the property. Even when the suit was filed, the defendant insisted that he is owner of the property. In view of the above, if the two courts below reached to the conclusion that the defendant has denied the title of the plaintiffs, two courts below have rightly decided so.

First Appellate Court also held that the plaintiffs proved the case of personal bona fide necessity and that finding has been recorded by the First Appellate Court after considering the reasons given by the Trial Court and evidence produced by the parties. The First Appellate Court reversed the finding of the Trial Court on the issue of personal bona fide necessity after appreciation of facts and circumstances of the case and that finding of fact has not been vitiated.

In view of the above, I do not find any merit in this appeal and question of default is not very much relevant because of the reason that no relief can be granted to the appellant in view of the fact that on two issues default and denial of title, no substantial question of law involved in this appeal.

In view of above, appeal deserves to be dismissed, hence, it is dismissed.

At this stage , learned counsel for the appellant submitted that the appellant is tenant in the suit premises since long, therefore, some time may be granted to the appellant to wind up his business.

Though, it is very old matter and even second appeal was preferred in the year 2005 and the appeal has been admitted without formulating the substantial question of law, still looking to the totality of the facts, this Court deems that the appellant be granted some time to vacate the suit premises.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a

period of two months from today that he shall hand over the vacant possession of the premises to the land lord by or before 31.12.2006 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.1.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA)J.

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